

LEGISLATURE OF NEBRASKA  
NINETY-SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 352**

Introduced by Brashear, 4; Chambers, 11; Dw. Pedersen, 39

Read first time January 8, 2001

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend sections  
2 29-3601, 29-3603, and 29-3604, Reissue Revised Statutes  
3 of Nebraska, and section 29-3602, Revised Statutes  
4 Supplement, 2000; to provide for a driver's safety  
5 training program as pretrial diversion; to harmonize  
6 provisions; and to repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 29-3601, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           29-3601. The Legislature finds that pretrial diversion  
4 offers persons charged with criminal offenses and minor traffic  
5 violations an alternative to traditional criminal justice or  
6 juvenile justice proceedings in that: (1) It permits participation  
7 by the accused only on a voluntary basis; (2) the accused has  
8 access to counsel prior to a decision to participate; (3) it occurs  
9 prior to an adjudication but after arrest and a decision has been  
10 made by the prosecutor that the offense will support criminal  
11 charges; and (4) it results in dismissal of charges, or its  
12 equivalent, if the individual successfully completes the diversion  
13 process.

14           Sec. 2. Section 29-3602, Revised Statutes Supplement,  
15 2000, is amended to read:

16           29-3602. The county attorney of any county may establish  
17 a pretrial diversion program with the concurrence of the county  
18 board. Any city attorney may establish a pretrial diversion  
19 program with the concurrence of the governing body of the city.  
20 Such programs shall be established pursuant to section 29-3603 and  
21 sections 5 to 10 of this act.

22           Sec. 3. Section 29-3603, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           29-3603. A pretrial diversion plan for criminal offenses  
25 shall include, but not be limited to:

26           (1) Formal eligibility guidelines established following  
27 consultation with criminal justice officials and program  
28 representatives. The guidelines shall be written and made

1 available and routinely disseminated to all interested parties;

2 (2) A maximum time limit for any defendant's  
3 participation in a diversion program, beyond which no defendant  
4 shall be required or permitted to participate. Such maximum term  
5 shall be long enough to effect sufficient change in participants to  
6 deter them from criminal activity, but not so long as to prejudice  
7 the prosecution or defense of the case should the participant be  
8 returned to the ordinary course of prosecution;

9 (3) The opportunity for eligible defendants to review,  
10 with their counsel present, a copy of general diversion program  
11 requirements including average program duration and possible  
12 outcome, prior to making the decision to enter a diversion program;

13 (4) Dismissal of the diverted case upon completion of the  
14 program;

15 (5) A provision that participants shall be able to  
16 withdraw at any time before the program is completed and be  
17 remanded to the court process without prejudice to them during the  
18 ordinary course of prosecution;

19 (6) Enrollment shall not be conditioned on a plea of  
20 guilty; and

21 (7) Defendants who are denied enrollment in a diversion  
22 program shall be afforded an administrative review of the decision  
23 and written reasons for denial.

24 Sec. 4. Section 29-3604, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26 29-3604. No person charged with a violation of section  
27 60-6,196 or 60-6,197 shall be eligible for pretrial diversion under  
28 a program established pursuant to sections 29-3601 to 29-3603 and

1 sections 5 to 10 of this act.

2 Sec. 5. For purposes of sections 6 to 10 of this act:

3 (1) Department means the Department of Motor Vehicles;  
4 and

5 (2) Minor traffic violation does not include leaving the  
6 scene of an accident, driving under the influence of alcoholic  
7 liquor or drugs, willful reckless or reckless driving,  
8 participating in a speed contest, operating a motor vehicle to  
9 avoid arrest, refusing a breath or blood test, driving on a  
10 suspended or revoked operator's license, any injury accident,  
11 speeding of more than twenty miles per hour over the speed limit,  
12 operating a motor vehicle without insurance, or operating a motor  
13 vehicle that is not registered.

14 Sec. 6. A pretrial diversion plan for a minor traffic  
15 violation shall include, but not be limited to:

16 (1) Formal eligibility guidelines established following  
17 consultation with criminal justice officials, program  
18 representatives, and the department. The guidelines shall be  
19 written and made available and routinely disseminated to all  
20 interested parties;

21 (2) A maximum time limit for any defendant's  
22 participation in a driver's safety training program, beyond which  
23 no defendant shall be required or permitted to participate. Such  
24 maximum term shall be long enough to effect sufficient change in  
25 participants to deter them from criminal activity, but not so long  
26 as to prejudice the prosecution or defense of the case should the  
27 participant be returned to the ordinary course of prosecution;

28 (3) The opportunity for eligible defendants to review,

1 with their counsel present, a copy of general diversion program  
2 requirements including average driver's safety training program  
3 duration and possible outcome, prior to making the decision to  
4 enter a diversion program; and

5 (4) Dismissal of the diverted case upon completion of the  
6 driver's safety training program.

7 Sec. 7. (1) A driver's safety training program as  
8 authorized in section 6 of this act, shall:

9 (a) Provide a curriculum of driver's safety training, as  
10 approved by the department, which is designed to educate persons  
11 committing minor traffic violations and to deter future violations;

12 (b) Require payment of a fee approved by the department  
13 which includes:

14 (i) The reasonable and appropriate cost of the  
15 presentation and administration of the program; and

16 (ii) A five-dollar fee to be paid by each person  
17 attending the program. The fee shall be remitted by the program  
18 administrator to the State Treasurer for credit to the Department  
19 of Motor Vehicles Cash Fund; and

20 (c) Be administered by an organization or a governmental  
21 entity primarily dedicated to public safety.

22 (2) The program administrator of each driver's safety  
23 training program shall keep a record of attendance and shall be  
24 responsible for determining eligibility. A report of attendance at  
25 all driver's safety training programs in the state shall be filed  
26 with the department each month. All records of attendance shall be  
27 filed with the department by program administrators under rules and  
28 regulations adopted and promulgated by the department to assure

1 that no individual takes the approved course more than once within  
2 any three-year period in any jurisdiction; and

3 (3) The department shall approve the curriculum and costs  
4 of each program and shall adopt and promulgate rules and  
5 regulations governing such programs, including guidelines for cost,  
6 minimum instruction period, curriculum, and instructor  
7 certification.

8 Sec. 8. Any organization or governmental entity desiring  
9 to offer a driver's safety training program shall first obtain a  
10 license from the department, to be renewed annually. The license  
11 fee shall be fifty dollars, with a fifty-dollar annual renewal fee.  
12 The license fees and renewal fees shall be remitted by the  
13 department to the State Treasurer for credit to the Department of  
14 Motor Vehicles Cash Fund. Any applicant who is not approved may  
15 appeal pursuant to the Administrative Procedure Act.

16 Sec. 9. Any driver operating a commercial motor vehicle  
17 for which a citation has been issued or a charge has been filed  
18 shall not participate in a program under this section if the  
19 violation would count toward disqualification under section  
20 60-4,168.

21 Sec. 10. Sections 5 to 10 of this act shall not apply to  
22 programs of pretrial diversion for offenses other than minor  
23 traffic violations.

24 Sec. 11. This act becomes operative on January 1, 2002.

25 Sec. 12. Original sections 29-3601, 29-3603, and  
26 29-3604, Reissue Revised Statutes of Nebraska, and section 29-3602,  
27 Revised Statutes Supplement, 2000, are repealed.